



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF DİLEK GENÇ v. TÜRKİYE

(Applications nos. 74601/14 and 78295/14)

JUDGMENT

Art 6 § 1 (criminal) and Art 6 § 3 (d) • Fair hearing • Examination of witnesses
• Legal impossibility to examine witnesses in administrative proceedings, depriving the applicant of the possibility to challenge the sole, if not decisive, police evidence against her on the basis of which she was fined • Structural procedural defect stemming from the application of the domestic legal framework and case-law at the material time • Domestic courts' failure to remedy resulting prejudice

Prepared by the Registry. Does not bind the Court.

STRASBOURG

21 January 2025

FINAL

30/06/2025

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Dilek Genç v. Türkiye,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Arnfinn Bårdsen, *President*,

Saadet Yüksel,

Pauliine Koskelo,

Jovan Ilievski,

Péter Paczolay,

Davor Derenčinović,

Stéphane Pisani, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the applications (nos. 74601/14 and 78295/14) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Ms Dilek Genç (“the applicant”), on the various dates indicated in the appended table;

the decision to give notice to the Turkish Government (“the Government”) of the complaint concerning the applicant’s right to a fair trial under Article 6 §§ 1 and 3 (d) of the Convention, and to declare the remainder of the applications inadmissible;

the Government’s observations;

Having deliberated in private on 17 December 2024,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applications concern the alleged unfairness of two sets of administrative proceedings whereby the applicant sought to challenge administrative fines imposed on her. She challenged the fines on the basis that, among other things, the Code of Administrative Procedure lacked a provision enabling the examination of witnesses in proceedings before the administrative courts, and the domestic courts had failed to state their reasons for dismissing her objections. The applicant complained of a violation of her right to a fair trial under Article 6 of the Convention.

THE FACTS

2. The applicant was born in 1973 and lives in İzmir. She was represented by Mr K. Akyüz, a lawyer practising in İzmir.

3. The Government were represented by their Agent at the time, Mr Hacı Ali Açıkgül, former Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye.

4. The facts of the case may be summarised as follows.

5. At the material time, the applicant was the owner of a music hall in İzmir which had an alcohol licence.

6. On 22 June 2011, in accordance with section 6 of Law no. 2559 on the Duties and Powers of the Police, the Bornova Municipal Council issued the applicant with an administrative fine for failing to comply with the official closing times for public entertainment venues set by municipalities, namely 12 midnight on weekdays and 12.30 a.m. at weekends. The administrative fine amounted to 3,680 Turkish liras (TRY – approximately 1,593 euros (EUR) according to the exchange rate at the material time), double the usual fine, as the municipal council noted that the applicant had committed the same offence twice within a year. On 6 July 2011, following another inspection, a second fine of the same amount was imposed on the applicant.

7. The fines were based on reports drawn up by police officers on 13 May 2011 and 8 June 2011 which stated that the music hall had been open at 1.15 a.m. and 12.50 a.m. respectively, and there had been customers inside.

8. On 15 December 2011 the applicant initiated two separate sets of administrative proceedings against the Bornova municipality before the İzmir Administrative Court, seeking the annulment of the fines in question. She denied failing to comply with the official closing times, arguing that she had stopped serving customers prior to those hours and that the music hall had been open after that time only for daily cleaning and maintenance.

9. By written observations dated 24 February 2012, the applicant argued that, even though section 25 of the Minor Offences Act required explicit evidence proving an act deemed to be a minor offence, in imposing the fines on her, the municipality had merely relied on the reports drawn up by the police, which had not been supported by any evidence. In that regard, the applicant maintained that the police reports had been pre-printed documents on which the police had simply filled in information concerning the times of the minor offences and the address of the place relevant to the alleged breach. In the applicant's view, even simple traffic fines were imposed on the basis of documents; the administrative fines imposed on her, which had been higher and had shaken her financial situation to its foundations, should have been imposed only on the basis of valid evidence supported by technological means. Such a state of affairs had deprived her of any opportunity to contest the findings contained in the police reports, thereby giving rise to a violation of the principle of equality of arms as protected by the right to a fair trial under Article 6 of the Convention. On that basis, the applicant asked the Administrative Court to hear witness evidence against the police reports, arguing that even though the police officers had claimed that the music hall had remained open after closing time, their reports had not reflected the truth, since at that moment in time her employees had been cleaning the hall.

10. On 29 January 2013 the İzmir Administrative Court dismissed the legal challenges brought by the applicant in two separate but almost identical two-page judgments. After summarising the facts of the cases, the court found

no unlawfulness in the municipality's decisions to impose fines on the applicant, as it had been established that her music hall had remained open beyond the closing times set for entertainment venues at the material time. The court's judgments did not address the applicant's claims that the music hall had been open because her employees had been cleaning the venue and carrying out maintenance; nor did they rule on the applicant's applications to adduce witness evidence to refute the police reports. The court wrongly stated that its judgments could be appealed against to the İzmir Regional Administrative Court.

11. The applicant appealed against those judgments to the İzmir Regional Administrative Court, submitting, among other things, that she could not effectively challenge the findings of the police reports owing to the fact that her application for witnesses to be heard had not been taken into account.

12. On 24 and 30 April 2013 the İzmir Regional Administrative Court refused to entertain the appeals, holding that the judgments of the administrative courts on objections lodged against fines imposed under section 6 of Law no. 2559 were final, in accordance with the second subsection of that provision, and thus were not amenable to appeal.

13. On 14 June 2013 the applicant lodged two individual applications with the Constitutional Court, alleging that her right to a fair trial had been violated owing to (i) the Administrative Court's reliance on only the police reports and failure to question their credibility, and (ii) the Administrative Court's silence as to her applications to have her witnesses heard. The applicant reiterated her claims as set out in her written submissions dated 24 February 2012, including her assertions that there was no evidence to support the findings in the police reports that there had been customers in her music hall after the permitted hours. Moreover, the applicant submitted that she had not been given the opportunity to refute the police reports, since the Administrative Court had simply ignored her application for witnesses to be heard and had failed to state why it had not found her arguments appropriate. In the applicant's view, the Administrative Court's stance had breached the principle of equality of arms, the right to a reasoned judgment and her right to have her case determined in accordance with the right to a fair trial. Lastly, the applicant added that the fines in question, which had shaken her financial situation to its foundations, had become final, which meant that she had to pay them.

14. On 7 April and 27 June 2014, the Constitutional Court declared the applicant's individual applications inadmissible, holding that her complaints relating to the fairness of the proceedings and the right to obtain the attendance of witnesses had been manifestly ill-founded. In its reasoning, the Constitutional Court held that the İzmir Administrative Court had dismissed the objections lodged by the applicant against the fines imposed on her by conducting a written procedure (*yazılı usul*) and on the basis of information and documents contained in the case files, and by applying the relevant

domestic legal provisions. It went on to state that the applicant had failed to submit any information or proof demonstrating that she had not been informed of the observations lodged by the Bornova municipality or that she had been unable to present her arguments or effectively challenge the evidence and arguments which it had submitted. Taking the view that the applicant's complaints that her cases should not have been dismissed concerned the interpretation of the law, and thus the outcome of the proceedings, the Constitutional Court held that they constituted a type of further appeal and should therefore be declared inadmissible as being manifestly ill-founded, given that the decisions of the Administrative Court did not contain any manifest error of assessment or arbitrariness.

15. As regards the applicant's complaint pertaining to her inability to have her witnesses heard by the Administrative Court, the Constitutional Court held that a written procedure applied to proceedings before the administrative courts of first-instance, which had to adopt their decisions on the basis of written pieces of evidence (*yazılı delil araçları*). In that connection, the Constitutional Court held that the İzmir Administrative Court had found it established that the applicant had failed to abide by the official closing times by referring to the police reports, without needing to hear her witnesses. Accordingly, the Constitutional Court took the view that, in view of the remaining evidence, the applicant's complaint that her request to have witnesses heard had been rejected for no reason lacked any basis and declared it inadmissible as being manifestly ill-founded.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. The Code of Administrative Procedure

16. The relevant Articles of the Code of Administrative Procedure (Law no. 2577), as in force at the material time, read:

Scope and nature

Article 1

"...

2. In [proceedings] before the Supreme Administrative Court, regional administrative courts, administrative [courts] and tax courts, a written procedure shall apply, and the assessment shall be carried out on the basis of documents (*evrak*)."

Hearings

Article 17

"1. [A] hearing shall be held at the request of one of the parties in: actions for annulment which are brought before the Supreme Administrative Court [or] administrative or tax courts; actions for a full remedy which exceed 25,000 Turkish

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liras; and tax proceedings where the total sum of tax, duty and [the relevant] fee and similar financial liabilities, as well as any [linked] increased amounts and penalties, exceeds 25,000 Turkish liras.

2. The holding of a hearing in the context of appeals and appeals in cassation is conditional upon the parties requesting this and the Supreme Administrative Court or the competent regional administrative court making a decision [in this regard].

3. An application for a hearing may be made in the statement of claim or [in] the reply or defence.

4. The Supreme Administrative Court, a court or a judge is not bound by the restrictions enumerated in the first and second paragraphs, and may decide to hold a hearing of its [or his or her] own motion.

5. Summonses shall be sent to the parties at least thirty days prior to the hearing date.”

Principles regarding hearings

Article 18

“1. Hearings shall be held in public. In cases where general morals or public safety so dictate, all or part of [a] hearing shall be held *in camera* following a decision by the competent division or court.

2. Hearings shall be presided over by the president [of the court in question].

3. The parties shall be given the floor twice during hearings. If only one of the parties appears, only his or her submissions will be heard; if neither of the parties appears, no hearing shall be held, and the assessment shall be carried out on the basis of documents.

...”

Examination of cases

Article 20

“1. The Supreme Administrative Court, regional administrative courts, administrative [courts] and tax courts shall, of their own motion, carry out any type of examination related to the cases they are adjudicating. Courts may ask the parties or any other relevant third parties to send the documents that they deem necessary and to produce all sorts of information within a set time-limit. Those concerned must comply with such requests within the set time-limit. The time-limit may be extended only once, if just reasons exist.

...

3. However, by indicating the reasons for [their decisions], the President [of the Republic], the Vice-President or ministers may [choose] not to produce the information or document if the requested document or information relates to State security or [the State’s] fundamental interests, or relates to a foreign State as well as State security and [the State’s] fundamental interests. No decision may be issued on the basis of defence [submissions] based on information and documents that have not been produced.

...”

Cases where the Code of Civil Procedure and the Code of Tax Procedure will be applied

Article 31

“1. The provisions of the Code of Civil Procedure shall be applied in respect of issues in relation to which this Code contains no provision, [such as] the disqualification of judge[s] from hearing a case and [their] recusal, capacity (*ehliyet*), the intervention of third parties in a case (*üçüncü şahısların davaya katılması*), the notice given to relevant third parties (*davanın ihbarı*), parties’ lawyers, the examination of a case file by the parties and those concerned, the withdrawal and acceptance of an action, guarantee[s], counterclaim[s] (*mukabil dava*), expert[s], on-site inspection[s], the determination of proof, court costs, legal aid and the steps to be taken in response to the conduct of parties at hearings which disturb[s] the peace and order of the court, electronic transactions and the conduct of hearings by means of audiovisual communication techniques. ...

2. The relevant provisions of the Code of Tax Procedure shall be applied in the settlement of tax disputes, save for in cases where the Code of Civil Procedure is referred to, pursuant to this Act and the above paragraph.”

B. The Law on the Duties and Powers of the Police

17. Section 6 of Law no. 2559 on the duties and Powers of the Police provides as follows:

“[1.] [In the event that] public recreation venues or entertainment venues

(a) open before the date when they are due [to reopen], despite having been temporarily suspended from operating;

(b) do not comply with the [relevant] opening hours and closing times;

(c) are found not to have complied with the prohibitions specified in section 12 of this Law; or

(d) have been made to operate in breach of the legislative provisions,

managers of these venues shall be issued with an administrative fine ranging from TRY 500 million to TRY one billion [approximately EUR 420 and EUR 843, according to the exchange rate at the material time].

[2.] Administrative fines provided for in this Article shall be issued by municipal council[s] [where the venues are located] within the borders of a municipality, and by the general provincial council (*il daimi encümeni*) [where they are located] outside the borders of the municipality. The persons concerned shall be notified of the decisions on administrative fines in accordance with the provisions of Law no. 7201 on Notifications. Objection[s] against such fines may be filed with the competent administrative court[s] within a maximum of seven days from the date of notification. Objection[s] shall not suspend the execution of the penalty. Decision[s] on objections shall be final. Objections shall be concluded by means of an assessment, which shall be carried out on the basis of documents in cases [where a hearing is] not deemed to be necessary. Administrative fines shall be collected pursuant to the provisions of Law no. 6183 on the Collection of Debts due to the State.

[3.] In the event that the acts set out under this section are repeated within one year, the fine imposed shall be double the last fine imposed for the same type of breach.”

C. The Minor Offences Act

18. Section 2 of the Minor Offences Act (Law no. 5326) provides as follows:

The term minor offence is to be understood as meaning unjustified acts in respect of which the law provides for the imposition of administrative sanctions.

19. Section 3 of the Minor Offences Act provides as follows:

“...

(a) [Provisions of this Law] which concern legal remedies shall be applied in the event that other Laws have no provision[s] [in that regard].

(b) The remaining general provisions [of this Law] shall be applied in respect of all acts requiring administrative fines or the sanction of the transfer of property into public ownership.”

20. Certain provisions of the Minor Offences Act which were applicable to the proceedings in issue in the present case concern concepts which are indicative of the criminal nature of minor offences, such as intent, negligence, the commission of minor offences by omission, mistake, liability, grounds for justification, reasons for extinguishing liability, attempted offences, complicity and combined sentences.

II. RELEVANT CASE-LAW OF THE SUPREME ADMINISTRATIVE COURT AS SUBMITTED BY THE GOVERNMENT

21. As regards the issue of witnesses, the Government submitted that the Code of Administrative Procedure did not prohibit the hearing of witness evidence; the reason why the domestic administrative courts did not hear witnesses was because Article 31 of the Code of Administrative Procedure did not refer to witness evidence as a matter in respect of which the administrative courts could apply the provisions of the Code of Civil Procedure. In support of that contention, the Government submitted four judgments given by different divisions of the Supreme Administrative Court (in 2018, 2021 and 2022) in which, in their view, that court had considered whether other cases were pending before different courts and the restriction on the amendment of claims, even though those matters were not listed under Article 31 of the Code of Administrative Procedure.

22. Similarly, the Government submitted two judgments delivered by the Fifth Division of the Supreme Administrative Court in 2021 and 2022, in which it had dismissed actions for annulment lodged by two members of the judiciary who had been dismissed from their positions owing to their links with the “Fetullahist Terror Organisation/Parallel State Structure” (*Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması*). Each of those judgments contained a paragraph which read “... On the other hand, having seen that the plaintiff [made] an application for witnesses to be heard, it was not deemed necessary to hear those witnesses, in view of the assessment of the evidence available in the case file ...” According to the Government, these judgments indicated that the Supreme Administrative Court had not clearly established that witnesses could not be heard in administrative proceedings.

23. In a judgment delivered in 2022, the Supreme Administrative Court had also held that the cases against the respondent in that case which were pending before different courts could not be joined, because the Code of Administrative Procedure did not contain a provision on the joinder of cases, and Article 31 of that Code did not list joinder as a matter in respect of which the provisions of the Code of Civil Procedure could be applied.

THE LAW

I. JOINDER OF THE APPLICATIONS

24. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (d) OF THE CONVENTION

25. The applicant complained that she had not had a fair trial owing to a breach of her right to a reasoned judgment, because her submissions on the merits of the cases and her applications to have her witnesses heard in the administrative proceedings before the İzmir Administrative Court had been rejected without any reasons being given. The applicant further complained that there was no right under Turkish law to have witnesses give oral evidence in cases before the administrative courts, which was in contravention of the principle of equality of arms and the right to have a fair hearing.

26. As master of the characterisation to be given in law to the facts of the case before it (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 124, 20 March 2018), the Court considers that these complaints fall to be examined under Article 6 §§ 1 and 3 (d) of the Convention, which provides, in so far as relevant, as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing by [a] ... tribunal ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

...”

A. Admissibility

27. The Government raised four preliminary objections, alleging (i) that Article 6 of the Convention did not apply to the proceedings in issue; (ii) that the applicant had not suffered a significant disadvantage; (iii) that the applicant had not availed herself of the effective domestic remedies in respect of her complaints; and (iv) that the application should in any event be declared inadmissible as being manifestly ill-founded.

28. The applicant did not submit her observations within the time allocated for that purpose.

1. *Applicability of Article 6 of the Convention*

(a) The Government's submissions

29. The Government submitted that neither the criminal nor the civil limb of Article 6 of the Convention was applicable to the administrative proceedings which formed the basis of the applications. As regards the criminal limb, the Government submitted that none of the Engel criteria had been met, for the following reasons. Firstly, the administrative fine imposed on the applicant under Law no. 2559 on the Duties and Powers of the Police had not been criminal in nature, and the act of which she had been accused had not been enshrined as an offence under the Criminal Code. Similarly, administrative fines were not imposed under the Criminal Code, but in accordance with the Minor Offences Act or various other statutes where such fines were laid down, such as Law no. 2559. Lastly, the administrative fines in question had been imposed by an administrative body, namely Bornova Municipal Council, and were completely different from the judicial fines imposed by a court, as a person given an administrative fine could not be imprisoned in default of payment.

30. As regards the second Engel criterion, the Government contended that section 6 of Law no. 2559, under which the fines in the present case had been issued, was aimed at a specific group with a particular status, namely business owners who did not close their workplaces at the hours determined by the local authority. Moreover, the fines in question had not been of a punitive nature, but had aimed to ensure the proper functioning of public order and that businesses operating under equal conditions worked on equal terms. In the Government's view, while it was true that the fines could be regarded as a deterrent measure, they could not be classified as criminal sanctions.

31. As regards the third Engel criterion, the Government submitted that the fines had been "small". They also emphasised that there had been no risk of them being converted into a prison sentence and that they had not been entered in the applicant's criminal record. Moreover, the present case was distinguishable from *Özmurat İnşaat Elektrik Nakliyat Temizlik San. ve Tic. Ltd. Şti. v. Turkey*, (no. 48657/06, §§ 22-26, 28 November 2017) and

Sancaklı v. Turkey, (no. 1385/07, §§ 28-31, 15 May 2018), where the Court had found that the criminal limb of Article 6 of the Convention was applicable to administrative fines imposed under different statutes which were reviewed by criminal courts, because the judicial review of the administrative fines in those cases had been carried out by administrative courts and not criminal courts, due to the administrative nature of such fines.

(b) The Court's assessment

(i) Preliminary remarks

32. The Court reiterates that the assessment of the applicability of Article 6 under its criminal limb is based on three criteria, commonly known as the “Engel criteria” (see *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22). The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence, and the third is the nature and degree of severity of the penalty that the person concerned risks incurring (see, among other authorities, *Gestur Jónsson and Ragnar Halldór Hall v. Iceland* [GC], nos. 68273/14 and 68271/14, §§ 75-98, 22 December 2020).

33. Prior to assessing the present case in the light of the Engel criteria, the Court notes that in a factually identical case, namely in the case of *Milenović v. Slovenia* (no. 11411/11, 28 February 2013), it examined the applicant's complaint under Article 6 of the Convention considering that this provision was applicable. The case concerned proceedings relating to a fine imposed on the applicant, a bar owner, for his failing to operate within the fixed hours of operation laid down by legislation aimed at a specific group with a particular status, namely bar owners.

34. Moreover, in several other cases against Türkiye, the Court held that the criminal head of Article 6 of the Convention was applicable to proceedings concerning minor offences under various laws which were also aimed at a specific group with a particular status, and which were also punishable by administrative fines, an issue which is almost identical to the one under consideration in the present case. For instance, the Court found that the criminal limb of Article 6 § 1 of the Convention was applicable to administrative fines imposed on applicants for breaches of the Social Security Act (see *Hüseyin Turan v. Turkey*, no. 11529/02, §§ 15-21, 4 March 2008), the Minor Offences Act (see *Sancaklı*, cited above, §§ 30-31), the Regulation Concerning Group A Mines (see *Özmurat İnşaat Elektrik Nakliyat Temizlik San. ve Tic. Ltd. Şti.*, cited above, § 25), the Road Traffic Act (see *Şimşek, Andiç and Boğatekin v. Turkey*, (dec.), nos. 75845/12 and two others, 17 March 2020), and the Law on Associations (see *Korkut and Amnesty International Türkiye v. Türkiye*, no. 61177/09, § 45, 9 May 2023).

35. In line with the Court's well-established case-law in respect of the applicability of the criminal limb of Article 6 of the Convention to

proceedings concerning minor offences under Turkish law, the Constitutional Court did not find that the criminal limb of Article 6 of the Convention was inapplicable to the proceedings in issue in the applicant's case. Moreover, and more importantly, the Government did not argue that according to the Constitutional Court's own case-law, the imposition of administrative fines for minor offences was not considered to fall under the criminal limb of the right to a fair trial.

(ii) *The first criterion: the legal classification of the offence in domestic law*

36. Turning now to the first Engel criterion, the Court notes that it is uncontested that the act of which the applicant was accused and the corresponding sanction were not provided for in the Turkish Criminal Code. However, this is not decisive for the purposes of the applicability of Article 6 of the Convention under its criminal head, as the indications furnished by the domestic law have only a relative value; the very nature of the offence is a factor of greater import (see *Campbell and Fell v. the United Kingdom*, 28 June 1984, § 71, Series A no. 80). In the same vein, and contrary to the Government's contention, the fact that the impugned fines were issued by an administrative body and not a court makes no difference as regards the question of the applicability of the criminal limb of Article 6 of the Convention to the facts of the present case (see *Grande Stevens and Others v. Italy*, nos. 18640/10 and 4 others, § 100, 4 March 2014 for a list of cases in which the criminal limb of Article 6 of the Convention was found to be applicable to proceedings concerning fines imposed by administrative bodies).

(iii) *The second criterion: the nature of the offence*

37. As regards the second Engel criterion, namely the nature of the offence itself, the Court has always had regard to the group of persons at whom the infringed rule is targeted, the type and nature of the protected interests and the existence of a deterrent and punitive purpose (see *Saqueti Iglesias v. Spain*, no. 50514/13, § 25, 30 June 2020, with further references). In the present case, the Court observes that section 6(1)(b) of Law no. 2559 provides for a minor offence, namely a failure to comply with the opening hours and closing times for a specific group of people who pursue an economic activity, namely the owners of entertainment venues. The fact that the provision in question does not target the general public but a specific group may, depending on its nature and purpose, speak in favour of considering that such an offence falls outside the criminal limb of Article 6 of the Convention.

38. The Court will therefore examine whether the offence in issue in the present case could be regarded as having a punitive purpose. In that regard, it observes that the Government, while acknowledging the deterrent nature of

the provision, argued that it was not punitive since, in their view, it was intended to ensure that firms operating under identical conditions conducted their business on an equal footing, and was thus to ensure the proper functioning of public order.

39. In the Court's view, the objective pursued by the provision, as identified by the Government, is comparable to the preservation of fair competition among similar businesses by encouraging them, on pain of administrative fines, to refrain from practices which may infringe competition – in this case, operating outside the permitted hours. However, both the protection of competition – which is at issue in the present case to a certain, albeit limited, extent – and the aim of maintaining public order are general interests of society which are normally protected by criminal law (for the applicability of the criminal head of Article 6 to an offence which is intended to guarantee the protection of public order, see *Asadbeyli and Others v. Azerbaijan*, nos. 3653/05 and 5 others, § 153, 11 December 2012, and for proceedings dealing with breaches of competition law, see *SA-Capital Oy v. Finland*, no. 5556/10, § 68, 14 February 2019, with further references). Indeed, some of the provisions of the Minor Offences Act applicable to the proceedings in the present case contain concepts such as intent, negligence, the commission of minor offences by omission, mistake, liability, grounds for justification, reasons for extinguishing liability, mistake, attempted offences, complicity and combined sentences, which are indicative of the criminal nature of minor offences (see *Ziliberberg v. Moldova*, no. 61821/00, § 34, 1 February 2005), including the one at issue in the present case (see paragraph 20).

(iv) *The third criterion: the nature and degree of severity of the penalty*

40. With regard to the third Engel criterion, namely the nature and degree of severity of the penalty that the person concerned risks incurring, the Court stresses that the primary purpose of section 6(1)(b) of Law no. 2559 is to punish offenders; none of the administrative fines provided for under that provision are intended to be pecuniary compensation for the damage caused by the failure to comply with the operating hours set by municipalities. The last subsection of section 6 of Law no. 2559, which provides for the imposition of an increased fine in the event of reoffending (see *Ruotsalainen v. Finland*, no. 13079/03, § 46, 16 June 2009), also attests to the punitive purpose of the sanction. The fines in question were therefore essentially intended to punish the applicant in order to prevent her from reoffending, and they were therefore based on provisions which had both a preventive purpose – to deter her from reoffending – and a punitive purpose – to sanction conduct which the legislature deemed unlawful (see *Korkut and Amnesty International Türkiye*, cited above, § 45, concerning administrative fines imposed on associations in the event of a failure to report donations received from abroad, and, *mutatis mutandis*, *Edizioni Del Roma Societa Cooperativa*

A.R.L. and Edizioni del Roma S.R.L. v. Italy, nos. 68954/13 and 70495/13, § 41, 10 December 2020). In the Court's view, this establishes the criminal nature of the offence in the present case. Accordingly, the fact that the offence was punishable solely by a fine which, as the Government pointed out, could not, in the event of non-payment, be converted into imprisonment is not in itself decisive for the question of the applicability of the criminal limb of Article 6 of the Convention, since the relative lightness of the penalty at issue cannot deprive an offence of its inherently criminal character (see *Grosam v. the Czech Republic* [GC], no. 19750/13, § 115 *in fine*, 1 June 2023, with further references).

(v) *Conclusion*

41. In view of the above, the Court finds that the offence of which the applicant was accused and convicted should be classified as "criminal" for the purposes of Article 6 of the Convention, which means that the criminal limb of Article 6 of the Convention was applicable to the administrative proceedings forming the basis of the present cases. The Court thus dismisses the Government's preliminary objection claiming otherwise. There is therefore no call for the Court to assess whether the civil aspect of Article 6 § 1 of the Convention was applicable in the present case.

2. *Lack of significant disadvantage*

(a) *The Government's submissions*

42. The Government submitted that the fines imposed on the applicant had not given rise to any significant pecuniary hardship for her, because the amounts of the fines had been nominal and quite modest, in view of the economic welfare of Türkiye. More importantly, at no point during the proceedings, including the proceedings before the Constitutional Court and the Court, had the applicant provided any information as regards her financial situation, nor had she specified what impact the administrative fine and the subsequent proceedings had had on her personal life. In addition, the case file had not contained any such information. Notwithstanding their pecuniary aspect, the administrative fines at issue could not be regarded as having caused the applicant any significant damage, because the nature of such fines was fundamentally different from that of judicial fines, as the Government had explained in detail in their submissions as to incompatibility.

43. Moreover, the Government submitted that there was no compelling reason requiring an examination of the legal issues raised in the present case, arguing that the Court had had a number of opportunities to rule on complaints similar to the ones in the present case and to determine the obligations of the Contracting States under the right to a fair trial. Similarly, the present application neither raised serious questions affecting the application and interpretation of the Convention nor demonstrated that there

was a need to clarify the State's obligations under the Convention or address a systemic problem affecting other persons in the same position as the applicant. In any event, the applicant had failed to explain on what grounds the present application should be treated differently from other cases on the same issue.

(b) The Court's assessment

44. Article 35 § 3 (b) of the Convention, as amended by Article 5 of Protocol No. 15 to the Convention¹, provides:

“3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

...

(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits.”

45. The Court reiterates that the third element of the “significant disadvantage” criterion, namely that no case may be rejected on this ground which has not been duly considered by a domestic tribunal, was repealed by Protocol No. 15 to the Convention, which entered into force on 1 August 2021. Accordingly, the Court is also no longer required to examine whether that element was met and will thus solely examine (i) whether the applicant suffered a significant disadvantage as a result of the alleged breach of her right to a fair trial under Article 6 § 1 of the Convention; and (ii) whether respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the complaint on the merits.

46. Inspired by the principle *de minimis non curat praetor*, the admissibility criterion contained in Article 35 § 3 (b) of the Convention hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case. The severity of the alleged violation should be assessed, taking account of both the applicant's subjective perceptions and what is objectively at stake in a particular case (see *Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010, and *Subaşı and Others v. Türkiye*, nos. 3468/20 and 18 others, § 62, 6 December 2022). The Court is conscious that the impact of a pecuniary loss must not be measured in abstract terms; even modest pecuniary damage may be significant in the light of a person's specific condition and the economic situation of the country or region in which he or

¹ See Article 8 § 4 of Protocol No. 15 and paragraph 24 of the Explanatory Report to Protocol No. 15.

she lives (ibid.; see also *Rinck v. France* (dec.), no. 18774/09, 19 October 2010).

47. In the present case, an administrative fine of approximately EUR 1,593 was imposed on the applicant in each of the two sets of proceedings, hence a total of EUR 3,186 (see paragraph 6 above) was at stake for her, an amount which was just over nine times the minimum monthly wage in Türkiye at the material time. Thus, the amount in question cannot, in the abstract, be regarded as insignificant, particularly in view of the Court's case-law, where amounts equal to or less than approximately EUR 500 may be regarded as not entailing a significant disadvantage under Article 35 § 3 (b) of the Convention (see *Bartolo v. Malta* (dec.), no. 40761/19, § 24, 7 September 2021, with further references).

48. Moreover, and contrary to the Government's contention that the applicant had not indicated, at any point during the proceedings, the potential impact of the fines on her, the Court observes that in her written submissions of 24 February 2012 to the Administrative Court (see paragraph 9) and in her applications to the Constitutional Court (see paragraph 13), the applicant stated that the fines in question had shaken her personal finances to [their] foundations. The Government did not provide any element which could cast doubt on the veracity of that submission, and the Constitutional Court did not dismiss the individual applications lodged by the applicant on the basis of a lack of significant disadvantage on account of her failure to proffer any explanations as to the amount of the fines or the impact they may have had on her (see *Rola v. Slovenia*, nos. 12096/14 and 39335/16, § 44, 4 June 2019).

49. Finally, the Court observes that the present case is the first one in which the Court has been called upon to assess the question of whether witnesses can be heard in proceedings before the administrative courts in Türkiye which concern the determination of a "criminal charge" within the autonomous meaning of Article 6 of the Convention, a point argued by the applicant in her application forms lodged with the Court. Accordingly, the Court cannot find that the present application does not raise an important legal matter.

50. In view of the above, the Court considers that there is no room to entertain the Government's preliminary objection based on the lack of significant disadvantage and thus dismisses it.

3. *Non-exhaustion of domestic remedies*

(a) **The Government's submissions**

51. The Government also raised a plea of non-exhaustion of domestic remedies, arguing that even though the applicant's inability to hear evidence from witnesses lay at the heart of her grievance, at no point during the proceedings before the İzmir Administrative Court had she specified either the names of her witnesses or the subjects on which they would testify. Nor

did she request that a hearing be held before that court to enable the examination of those witnesses. Although the applicant conceded that she had not done so, claiming that there had been no procedure allowing for such an examination, it was clear that her mere doubts as to the effectiveness of a particular legal procedure did not exempt her from the obligation to have recourse to it. Since the applicant had failed to request a hearing, the applications should be declared inadmissible for non-exhaustion of domestic remedies.

(b) The Court's assessment

52. The Court reiterates that under Article 35 § 1 of the Convention, it may only deal with an application after the exhaustion of those domestic remedies that relate to the breaches alleged and are also available and sufficient. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 71, 25 March 2014, and *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions 1996-IV*). The Court further reiterates that in the area of the exhaustion of domestic remedies there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy in question was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Mikail Tüzün v. Turkey*, no. 42507/06, § 17, 27 November 2018).

53. The Court observes that neither the İzmir Administrative Court, which did not deal with the applicant's application for witness evidence, nor the Constitutional Court, which examined it on the merits and found it inadmissible as being manifestly ill-founded, declared the complaint in question inadmissible for non-exhaustion of domestic remedies. The Court therefore considers that the Government's plea of non-exhaustion should not be entertained and thus dismisses it.

54. In view of the foregoing considerations, the Court dismisses the Government's plea of non-exhaustion of domestic remedies.

4. Manifestly ill-founded nature of the application

55. The Government invited the Court to declare the application inadmissible for being manifestly ill-founded on the grounds that the applicant's complaints had been examined in substance by the domestic courts, which had given decisions that did not disclose any arbitrariness or manifest error. In the Government's view, the İzmir Administrative Court had not found it necessary to hear witnesses and the Constitutional Court had

thoroughly examined the applicant's complaints and rejected them on the basis of reasons which were in line with the principles deriving from the Court's case-law. Having regard to the principle of subsidiarity and the fact that the Constitutional Court's examination could not be regarded as arbitrary or manifestly unreasonable, the Government asserted that the application should be found inadmissible as being manifestly ill-founded.

56. The Court notes that it has already examined similar objections raised by the Government in previous cases and rejected them (see, *Mehmet Çiftci v. Turkey*, no. 53208/19, § 26, 16 November 2021, *Demirtaş and Yüksekdağ Şenoğlu v. Türkiye*, nos. 10207/21 and 10209/21, §§ 77-78, 6 June 2023, *Kural v. Türkiye*, no. 84388/17, § 54, 19 March 2024, and *Namık Yüksel v. Türkiye*, no. 28791/10, § 35, 27 August 2024). It sees no reason to depart from those findings in the present case and therefore dismisses the Government's objection.

5. Conclusion on the admissibility of the applications

57. The Court holds that the application is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

58. The applicant did not submit her observations within the time allocated for that purpose.

59. In order to provide the Court with a better understanding of the subject matter of the applications, the Government submitted the following information. In accordance with Article 1 of the Code of Administrative Procedure, proceedings before the administrative courts were conducted in writing and the courts carried out their assessment on the basis of documents that they collected in accordance with the principle of investigation *proprio motu* (*re'sen araştırma ilkesi*) or those that were submitted by the parties. In that written procedure, the parties submitted their observations and the evidence on which they wished to rely to the administrative court in written form. The Government argued that the reason for adopting the written procedure in the administrative courts was to speed up the trial process, thereby ensuring the timely resolution of disputes. Notwithstanding that, Article 17 of the Code of Administrative Procedure provided for oral hearings in actions for annulment if one of the parties requested this or a court decided to hold such a hearing of its own motion, the latter being an exceptional situation which was uncommon in practice. Article 18 of the Code of Administrative Procedure provided that hearings should be held in public and that the parties could make oral submissions twice. The only exception as regards who could take the floor during hearings was provided for in respect

of tax proceedings, where State tax inspectors who had drawn up a tax assessment report, public accountants or taxpayers' accountants might be heard under certain circumstances. However, the Code of Administrative Procedure did not provide for the presence of a clerk during hearings or the drawing up of hearing records. The Regulation on the principles and procedures for the performance of administrative tasks and for the registry services of the regional administrative courts, administrative courts and tax courts had entered into force in 2015. Although it provided that the records of hearings before those courts should contain a brief summary of the hearing stage as well as the claims and submissions of the parties and their lawyers, the Government noted that in practice, hearing records contained summary information concerning the people taking part in a hearing and their claims and submissions.

60. As regards the issue of whether witnesses could be heard in administrative proceedings, the Government contended that no provision of the Code of Administrative Procedure clearly proscribed the examination of witnesses at hearings before the administrative courts. The Government further emphasised that in administrative cases the principle of freedom of evidence (*delil serbestisi ilkesi*) was applicable, on the basis of the principle of investigation *proprio motu* within the scope of the rule laid down in Article 20 § 1 of the Code of Administrative Procedure. That being the case, the Government argued that the practice of not hearing witnesses in administrative proceedings was based on domestic case-law rather than any statutory provision preventing this. In any event, the Government submitted two judgments of the Supreme Administrative Court dated 2021 and 2022, and argued that that court had not clearly ruled out hearing evidence from witnesses in the administrative proceedings in question (see paragraph 22 above).

61. The Government further submitted that issues concerning evidence were not regulated in detail in the Code of Administrative Procedure, which made reference to the Code of Civil Procedure for that purpose. Indeed, while Article 31 of the Code of Administrative Procedure listed matters in respect of which reference was made to the Code of Civil Procedure, such as expert evidence and on-site inspections, that provision did not include witness evidence. Nevertheless, the Government submitted four judgments dated 2018, 2021 and 2022 in which, in their view, the Supreme Administrative Court had considered whether other proceedings were pending before different courts and the restriction on actions being modified, even though those matters were also not listed under Article 31 of the Code of Administrative Procedure (see paragraph 21 above).

62. As regards the present case, the Government stressed that the assessment of whether it was appropriate to hear evidence from witnesses was at the discretion of the domestic courts, and the applicant's right to have her witnesses examined was not absolute. In the present case, even though the

applicant had alleged that the fact that her music hall had been closed at the time of the inspection could have been proved by hearing witnesses, she had not provided the Administrative Court with the names of any witnesses whom she wished to have summoned or specified the subjects on which they would testify. Similarly, even though the applicant had had the opportunity to request a hearing, she had failed to do so, through her own negligence. In any event, according to the Government, the Administrative Court had examined the applicant's application to summon witnesses, but had considered that "the data on the accuracy of the facts" constituting the basis for the imposition of the fines were sufficient.

63. Furthermore, the Government argued that the applicant's main allegation was that there had been a presumption that the police reports were accurate and it had been impossible to refute the presumption in practice, given the Administrative Court's failure to take into account her application to summon witnesses. However, the applicant had at all times been aware of the accusations against her and that she had been afforded the opportunity to challenge the authenticity of the evidence presented by the Bornova municipality and present her arguments as regards the alleged unlawfulness of the fines imposed on her. In any event, oral witness testimony could not be considered the only decisive evidence capable of proving her allegations. Indeed, the applicant could have submitted to the domestic court notarised written statements by the cleaning staff who had allegedly been at her music hall at the material time. In that regard, the Government also contended that the applicant could have installed video cameras at the music hall and submitted video footage or images showing the venue at the time when it had been inspected.

64. Lastly, the İzmir Administrative Court had based its decisions on not only the evidence furnished by the Bornova municipality, but also the applicant's allegations and evidence and had dismissed her objections on the basis of its reasoned findings. The İzmir Administrative Court had found that on the days in question the applicant's music hall had remained open past the closing times set by the municipality, and that there was no information or document capable of refuting the reports drawn up by the police. Furthermore, the applicant had not argued – and nothing suggested – that the police officers who had drawn up the relevant reports had been biased against her or had had any animosity towards her which could have led them to draw up inaccurate reports. In any event, the assessment of events arising from the alleged unreliability of evidence was always left to the discretion of a national court, whose primary duty was to assess the evidence and apply the domestic law.

65. In view of the above, the Government took the view that the proceedings before the Administrative Court had not seriously impaired the applicant's right to a fair trial and invited the Court to hold that there had been no violation of Article 6 of the Convention.

2. *The Court's assessment*

66. The general principles developed under these provisions with regard to the right to the examination of defence witnesses were summarised in *Murtazaliyeva v. Russia* ([GC], no. 36658/05, §§ 139-68, 18 December 2018). The general principles concerning the right to a reasoned judgment have been summarized in *Moreira Ferreira v. Portugal (no. 2)* ([GC], no. 19867/12, § 84, 11 July 2017) and in *Ayetullah Ay v. Turkey*, (nos. 29084/07 and 1191/08, § 128, 27 October 2020). Without requiring a detailed answer to every argument advanced by the complainant, the duty to give reasons presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings (*ibid.*).

67. The Court notes that the present case concerns the question of whether the requirements of a fair trial, as guaranteed by Article 6 §§ 1 and 3 (d) of the Convention, were complied with in the proceedings before the İzmir Administrative Court. The proceedings concerned the judicial review of administrative fines imposed on the applicant in her capacity as the owner of a music hall in relation to her failure to abide by the closing times set by the municipality. Furthermore, the administrative fines were imposed on the applicant by the Bornova Municipal Council on the basis of facts allegedly observed by police officers (see *Milenović*, cited above, § 31). However, in the actions she brought before the İzmir Administrative Court, the applicant contested the police's version of the facts, arguing, *inter alia*, that at the material time her music hall had been open for maintenance and cleaning, and not open to customers. She also asked that court to hear oral evidence from witnesses – an application which was left unaddressed.

68. Before the Court, the applicant argued, among other things, that she could not effectively challenge the evidence provided by the police, because there was no right under Turkish law to call witnesses to give oral evidence in cases before the administrative courts. In response, the Government argued that while the Code of Administrative Procedure did not contain any provision on the taking of oral evidence from witnesses, this did not prevent the administrative courts from hearing such evidence, and the problem stemmed from judicial practice. In their view, the applicant's failure (i) to request a hearing and (ii) to specify the names of her witnesses or the matters on which they would testify should be interpreted as meaning that she had chosen not to avail herself of the procedural rights available to her in relation to the examination of defence witnesses.

69. Accordingly, the Court will first examine the Government's arguments in relation to points (i) and (ii) to assess whether the domestic legal framework and practice, as detailed by the Government, allowed for the examination of witnesses in cases before the administrative courts, with a view to determining whether there was any prejudice to the applicant's right under Article 6 § 3 (d) of the Convention. If this is found to be the case, the

Court will further assess whether the prejudice to that right was remedied, having regard to the applicant's remaining complaint that the domestic courts failed to deliver reasoned judgments and the matters raised in the Government's counterarguments. In the Government's view, the applicant could effectively challenge the evidence against her in a manner which was in conformity with the standards stemming from Article 6 § 1 of the Convention, read in the light of Article 6 § 3 (d) of the Convention (see paragraphs 63 and 64).

(a) The applicant's failure to request that a hearing be held

70. The Court notes that even though the Code of Administrative Procedure provides for hearings in actions for annulment at the request of a party, it does not appear to set out a procedure whereby witnesses can be heard during such hearings. Indeed, as was conceded by the Government, Article 18 of the Code of Administrative Procedure, entitled "Principles relating to hearings", does not regulate the taking of evidence from witnesses in the course of hearings before the administrative courts, in that it merely states that the parties (either the plaintiff or his or her lawyer, and the respondent or his or her lawyer) shall be given the floor twice to make oral submissions, and that the only statutory exception to that rule is in respect of tax proceedings, where exceptions may be made in relation to tax inspectors, public accountants or accountants giving oral evidence (see paragraph 59). Moreover, none of the domestic court judgments submitted by the Government showed that the domestic courts, contrary to the provisions of the Code of Administrative Procedure concerning hearings in administrative proceedings, did hear witness evidence at public hearings (see paragraphs 21 and 22). Accordingly, no weight can be attached to the applicant's alleged failure to submit an application for a hearing to the İzmir Administrative Court.

(b) The applicant's failure to specify the names of her witnesses

71. While it is clear that the applicant asked the court to hear witness evidence to support her contention that her workers had been cleaning and carrying out maintenance in the music hall at the time when she was alleged to have disregarded the official closing times, it is true that she did not specifically name those workers. Normally, the Court assesses issues concerning the examination of defence witnesses on the basis of a three-pronged test enunciated in *Murtazaliyeva* (cited above), and a request to examine a witness whose name has not been indicated is likely to fail the first step of this test, as it may not be regarded as "sufficiently reasoned". That being said, the Court considers that the *Murtazaliyeva* test must necessarily be based on the understanding that the domestic system in question enables the examination of witnesses in such proceedings, as that would be the only

interpretation of the right to have witnesses heard and examined on one's behalf that would be practical and effective and not theoretical and illusory. Accordingly, the Court will seek to ascertain whether the applicant had the right to have her witnesses heard in the proceedings before the İzmir Administrative Court.

72. In that regard, the Court notes firstly that the Code of Administrative Procedure does not contain any provisions on the rules or procedures relating to taking of oral evidence, the persons who may (or may not) give evidence as witnesses, the authority empowered to summon witnesses or the manner in which an authority may summon them, if it is possible to do so. As admitted by the Government, the provision for hearing transcripts in administrative proceedings, albeit limited, was not made until 2015, which was after the conclusion of the proceedings in respect of which the applicant lodged the present applications (see paragraph 59).

73. Moreover, and more importantly, when dismissing the applicant's complaints, the Constitutional Court indicated that "a written procedure applied to proceedings before the first-instance administrative courts, which should adopt their decisions on the basis of written pieces of evidence", which does not seem to be in harmony with the view expressed by the Government (see paragraph). The Court further finds it noteworthy that the Government did not submit any judgments of the Constitutional Court on this matter or argue that the Constitutional Court's practice in this regard supported their interpretation of the matter.

74. That being said, the Government submitted two judgments of the Fifth Division of the Supreme Administrative Court handed down in 2021 and 2022, in support of their position on the issue of witnesses in administrative proceedings – namely that the Supreme Administrative Court "had not made a clear determination to the effect that witnesses could not be heard in administrative proceedings" (see paragraph 22). However, the judgments referred to by the Government were delivered some seven and eight years after the present application was lodged. Moreover, since those cases concerned proceedings before the Supreme Administrative Court, it is not clear how they could be taken as precedents for the administrative proceedings which took place before the first-instance court and formed the basis of the present applications, since no appeal lay against the judgments rendered by that court, meaning that they could not be adjudicated by the Supreme Administrative Court.

75. Thirdly, the Court cannot but note that the two cases cited by the Government did not yield a positive outcome, in that it was stated that it had not been considered necessary to hear the witness evidence proposed by the plaintiffs, in view of the evidence in the case files. While this factor cannot, by and of itself, be determinative of the assessment of the well-foundedness of the Government's argument, the Court finds it noteworthy that in relation to such a common issue – hearing witnesses – not a single judicial decision

showing that an administrative court had heard evidence from a witness was submitted.

76. Fourthly, as regards the Government's contention that the examination of witnesses before the administrative courts was possible under Article 31 of the Code of Administrative Procedure, the Court notes that the four judgments submitted by the Government to support that contention did not concern the issue of witnesses (see paragraph 21) (see, *mutatis mutandis*, *Margari v. Greece*, no. 36705/16, § 32 *in fine*, 20 June 2023). In addition, in so far as those judgments were perceived to imply that the domestic administrative courts could hear witness evidence by resorting to the provisions of the Code of Civil Procedure on witnesses on the basis of Article 31 of the Code of Administrative Procedure, the Court notes that even if that were the case, the judgments referred to by the Government were handed down in 2018, 2021 and 2022, whereas the present applications were lodged in 2014. It cannot therefore be held that the possibility referred to by the Government existed at the time the application was lodged. In any event, it does not escape the Court's attention that in one of the judgments submitted by the Government in support of their claim that the Supreme Administrative Court had not clearly ruled out the possibility of witnesses being examined in administrative proceedings, that court found that if a matter was not mentioned in Article 31 of the Code of Administrative Procedure, that provision could not be relied on to apply the provisions of the Code of Civil Procedure in relation to such a matter (see paragraph 23 above).

77. Lastly, while the Government argued that the principle of investigation *proprio motu* enabled the administrative courts to hear evidence from witnesses in administrative proceedings, they failed to submit a single judicial decision which supported their interpretation of that principle.

78. Such a state of affairs, irrespective of whether it stemmed from the Code of Administrative Procedure or the domestic courts' practice, ran counter to the principle of adversarial proceedings as protected under Article 6 § 1 of the Convention, since in the present case, it limited the applicant's procedural opportunity to contest the facts forming the basis for the imposition of the administrative fines to an extent that is incompatible with the Court's established case-law under that provision, which provides that in cases before a court of first and only instance which is empowered to examine questions of both fact and law and whose decision is not amenable to appeal (such as the court in the instant case), the question of the credibility of a witness whose evidence has been taken as a basis for the imposition of a sanction cannot, as a matter of fair trial, be properly determined without a direct assessment of the evidence, including witness evidence (see *Hannu Lehtinen v. Finland*, no. 32993/02, § 48, 22 July 2008).

79. In view of the foregoing considerations, which indicate a structural procedural defect stemming from the application of the legal framework and the case-law of the domestic courts at the material time, as relied on by the

Government, the Court concludes that the Government failed to demonstrate that had the applicant named her witnesses, the domestic court would have heard oral evidence as required by Article 6 §§ 1 and 3 (d) of the Convention. That being so, the Court considers that there is no scope in the present case to apply the *Murtazaliyeva* test in assessing the complaints concerning the domestic court's refusal to call defence witnesses.

(c) Whether the prejudice to the applicant was remedied

80. The Government argued that the applicant had failed to submit notarised statements by her witnesses, that the police officers had had no reason not to tell the truth, and that the applicant could have installed video cameras in the music hall and submitted the footage as evidence. The Court will now examine whether the factors raised in those arguments were such as to remedy the prejudice caused by the procedural defect identified above.

(i) Notarised statements by defence witnesses

81. In view of the above-mentioned domestic legal framework and practice, which fell short of the requirements of Article 6 § 1 of the Convention concerning the examination of witnesses before the administrative courts, the Court takes the view that requiring the applicant to obtain written statements from her witnesses before a notary public and then submit them to the İzmir Administrative Court in order to effectively challenge the evidence forming the basis for the fines would hardly be compatible with the requirements of Article 6 § 1 of the Convention, since it would mean that a procedure that is *prima facie* contrary to the guarantees of Article 6 §§ 1 and 3 (d) of the Convention would continue to persist in the absence of any reason, let alone a good one (see *Karpenko v. Russia*, no. 5605/04, § 70, 13 March 2012 in the context of prosecution witnesses).

82. Even if the procedure were compatible, assessing the credibility of a witness is a complex task which cannot be achieved by merely reading his or her recorded words (see *Daştan v. Turkey*, no. 37272/08, § 33, 10 October 2017). Accordingly, making written statements available could only constitute a safeguard where the credibility of the witnesses was not in question (see, to the same effect, *Beraru v. Romania*, no. 40107/04, § 66, 18 March 2014, and *Cutean v. Romania*, no. 53150/12, § 61, 2 December 2014), which was not the case here, as the applicant contested the credibility of the police officers' statements. It is therefore unclear how the İzmir Administrative Court could have resolved that question on the basis of written statements made by defence witnesses, as suggested by the Government. In any event, the Government failed to show that their contention was based either on a domestic legal provision or on a well-established practice of the domestic courts and was therefore a viable and foreseeable option for the

applicant. In such circumstances, the Court dismisses the Government's argument.

(ii) Police officers who have no reason not to tell the truth

83. The Court takes note of the Government's claim that the police officers had not been biased against the applicant and thus had had no reason not to tell the truth. However, it is not the Court's task to assess evidence, including whether the evidence given by the police officers was sufficiently credible or trustworthy, a task which falls primarily to the domestic courts, in the absence of an arbitrary or manifestly unreasonable assessment in that regard. Similarly, the fact that the only evidence in criminal proceedings is the witness testimony of a police officer is not in itself contrary to Article 6 of the Convention, as long as the accused has the opportunity to test this evidence in adversarial proceedings (see *Galstyan v. Armenia*, no. 26986/03, § 78, 15 November 2007). In the present case, however, the İzmir Administrative Court accepted the police report on the basis of which the fines were imposed, without addressing the applicant's above argument, even though it went to the heart of the case (compare *Buliga v. Romania*, no. 22003/12, § 55, 16 February 2021).

(iii) Installation of video cameras

84. Lastly, as regards the Government's contention that the applicant should have installed video cameras in the music hall in order to adduce evidence in support of her arguments in the legal disputes, the Court finds this argument wholly untenable. At this point, the Court reiterates that it is for the Contracting States to bring their systems in line with the requirements of Article 6 of the Convention, and the steps to be taken by applicants in order to have the benefit of the procedural guarantees under that provision may only be reasonable, which was not the case here. The Government's proposition is therefore dismissed.

(d) Conclusion

85. In view of the foregoing, the Court concludes that the domestic proceedings in the present case fell short of the requirements of the right to a fair trial, which deprived the applicant of the possibility to effectively challenge the police reports which were the sole, if not decisive, evidence forming the basis of the fines imposed on her. This was because the applicable legal framework and the case-law of the domestic courts did not permit the applicant to have her witnesses heard before the İzmir Administrative Court and the prejudice she had sustained on that account was not remedied by that court, which failed to state the grounds on which it decided to attach more weight to the reports drawn up by the police as opposed to her defence

submissions. Nor did that shortcoming was remedied by the Constitutional Court.

86. Accordingly, there has been a violation of Article 6 § 1 of the Convention read in the light of Article 6 § 3 (d) of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

88. The applicant did not submit any just satisfaction claims within the time-limit allotted to her, and the Court discerns no exceptional circumstances requiring it to award her compensation in respect of non-pecuniary damage (see *Nagmetov v. Russia* [GC], no. 35589/08, §§ 74-82, 30 March 2017). Accordingly, there is no call for the Court to rule on this matter.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

Done in English, and notified in writing on 21 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Nationality
1.	74601/14	Dilek Genç v. Türkiye	24/11/2014	Dilek GENÇ Turkish
2.	78295/14	Dilek Genç v. Türkiye	15/12/2014	Dilek GENÇ Turkish